UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,988	09/18/2006	Philips Steven Newton	NL 040286	3013

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EXAMINER
MCADAMS, BRAD

ART UNIT	PAPER NUMBER
4134	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/598,988	NEWTON ET AL.
	Examiner	Art Unit	
	ROBERT MCADAMS	4134	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *9/18/2006*.

2a) ☐ This action is FINAL.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-10* is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-10* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *18 September 2006* is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a) ☒ All   b) ☐ Some *   c) ☐ None of:

         1. ☒ Certified copies of the priority documents have been received.

         2. ☐ Certified copies of the priority documents have been received in Application No. _____.

         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *01/19/2007*.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____

DETAILED ACTION

Drawings

1.   The drawings Figs. 4A & 4B are objected to because Boxes(41-47) need to labeled as showed in Figs. 4A-4B.. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows: Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and Warmerdam, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer

having a specific data structure stored in memory held statutory product-by-process claim) with Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).   In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claims 6 and 9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claims 6 and 9 define a computer program product embodying functional descriptive material. However, the claim does not define a "computer-readable medium or computer-readable memory" and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" – Guidelines Annex IV). The scope of the presently claimed invention encompasses products that are not necessarily computer readable, and thus NOT able to impart any functionality of the recited program. The examiner suggests amending the claims to embody the program on "computer-readable medium" or equivalent; assuming the specification does NOT define the computer readable medium as a "signal", "carrier wave", or

"transmission medium" which are deemed non-statutory (refer to "note" below).

Any amendment to the claim should be commensurate with its corresponding

disclosure.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S.

Patent No. 6,421,717 B1 to *Kloba et al* (*Kloba*).

As to **Claim 1**, *Kloba* discloses a method of providing data storage for a

user device (Client 106A, Figure 1A) that is connectable to a remote server

(Server 104, Figure 1A) via a network (Communication Medium 120A, Figure

1A), the method comprising the steps of initiating a socket connection to the

remote server (174A, Figure 1J), providing an application interface for requests

for storing auxiliary data from applications in the user device (112A, Figure 1A),

and when a storage request is received, having the auxiliary data stored on the

remote server via the network (174C, Figure 1J; Column 23, Lines 30-47).

As to **Claim 2,** *Kloba* further discloses a method as in Claim 1, wherein
having the auxiliary data stored includes storing a user identification, and/or an
application identification (174B, Figure 1J; Column 23, Lines 34-37 and Lines 62-
65).

As to **Claim 3,** *Kloba* further discloses a method as in Claim 1, wherein
providing the application interface includes receiving request for reading data,
and when requested, having the auxiliary data retrieved from the remote server
via the network (The Client 108 accesses the remote server and sends a request
to sync and retrieve auxiliary data. (Figure 1J; Column 23, Lines 34-47).

As to **Claim 4,** *Kloba* further discloses a method of storing auxiliary data
from at least one user (Client 108, Figure 1A) on a remote server (Server 104,
Figure 1) that is connectable to a user device (Device 106A, Figure 1A) via a
network for providing storage for the user device (120B, Figure 1A), the method
comprising the steps of supporting a socket connection initiated by a storage
application in the user device (174A, Figure 1J), receiving, via the network,
requests for storing auxiliary data from applications in the user device (Requests
are received from the Provider 128. 174B, Figure 1J; Column 23, Lines 34-37)
and when a storage request is received, storing the auxiliary data on the remote
server (The data is stored on the remote server. 174B and 174C; Column 23,
Lines 34-41).

As to **Claim 5,** *Kloba* further discloses a method as claimed in Claim 4,
wherein storing the auxiliary data includes storing a user identification, and/or an

application identification (174B, Figure 1J; Column 23, Lines 34-37 and Lines 62-65).

As to **Claim 6,** *Kloba* further discloses a computer program product for providing data storage for a user device that is connectable to a remote server via a network, which program is operative to cause a processor to perform the method as claimed in Claim 1 (Data processing unit 103A includes a computer program product. Column 13, Lines 31-42).

As to **Claim 7,** *Kloba* further discloses a user device (Client 108, Figure 1A) for use in the method of providing data storage as claimed in Claim 1, the user device being connectable to a remote server (Server 104, Figure 1A) via a network (Communication medium 120, Figure 1A), which device comprises a transceiver means (Client Communications Module 110A, Figure 1A) for connecting the user device to the network, a control means for performing applications that may generate auxiliary data relating to the applications (Client 108 application interacts with objects which generate auxiliary data. Column 8, Lines 20-22), and a storage application for initiating a socket connection to the remote server, providing an application interface for requests for storing auxiliary data from the applications in the user device, and when a storage request is received, having the auxiliary data stored on the remote server via the network (Adapter 118 is a storage application for initiating a socket connection to the remote server. User Interface 114 provides an interface for requests for storing

auxiliary data. The request is received and stored on the remote server. Figure
1A; Column 8, Lines 27-39; Column 23, Lines 61-66)

As to **Claim 8,** *Kloba* further discloses a user device as claimed in Claim
7, wherein the device comprises read means for retrieving data (Client
Communications Module 110A, Figure 1A) from a storage medium, and the
control means are arranged for retrieving applications to be performed from the
storage medium (Client 106/108 Column 10, Lines 41-58).

As to **Claim 9,** *Kloba* further discloses a storage medium for carrying data
to be retrieved in a user device that is connectable to a remote server via a
network, wherein the storage medium comprises a computer program product
constituting an application for providing data storage for the user device, which
program is operative to cause a processor to perform the method as claimed in
Claim 1 (103I, Figure 1B1; Column 13, Lines 12-67).

As to **Claim 10,** *Kloba* further discloses a storage medium as claimed in
Claim 9, wherein the storage medium comprises at least one stream of real-time
information (Data Processing Unit 103A is attached to Communications Module
103B to process real time information from other modules. Column 13, Lines 18-
26).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT MCADAMS whose telephone number is (571)270-3309. The examiner can normally be reached on Monday-Thursday 6:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lun-Yi Lao can be reached on 571-272-7671. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RBM/
3/27/2008

/LUN-YI LAO/
Supervisory Patent Examiner, Art Unit 4134